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Illinois Commerce Commission
On Its Own Motion

Requirements governing the form and content
of contract summaries for the neutral fact-finder
process for 2000 under Section 16-112(c) of the
Public Utilities Act

Docket No. 00-0007

BRIEF ON EXCEPTIONS OF ILLINOIS POWER COMPANY

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Dated: April 6, 2000

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Pursuant to § 200.830 of the Commission's Rules of Practice and the schedule set forth by the Hearing Examiner in the above-referenced docket, Illinois Power Company ("IP" or "Illinois Power") hereby submits its brief on exceptions. IP would like to commend the Hearing Examiner for his efforts in moving this proceeding along and in crafting a Proposed Order ("HEPO") that, in general, reflects a balanced approach to the divergent views expressed in this case. Illinois Power nonetheless does have one exception to note.

I. Illinois Power did Explain How Its Proposal Would Work for All Bundled Contracts.

Section III(B) of the HEPO contains the following language:

IP also seems uncertain how its own proposal would be administered when it is faced with unbundling contracts for which no market assumptions exist. The Commission agrees that such contracts must be reported, but does not understand how IP intends to unbundle transition charges when it reports such contracts.

HEPO at 12. Illinois Power believes that it did explain exactly how its proposal would work. For example, during cross-examination of IP's witness by Mr. Robertson, Mr. Hastings clearly indicated that contracts for which no market data exists "would definitely be reported." Tr. at 124. He went on to state IP "would unbundle them according to the rules and wording and so forth that I

expect would come out of this proceeding.” *Id.* See also *id.* at 129 (in unbundling contracts, transition charges would be calculated by following the law). Indeed, Messrs. Robertson and Hastings had a colloquy on the differences in unbundling contracts depending on the dates of the contracts. *Id.* at 126-30. Thus, for those contracts for which no market data exists, IP clearly indicated not only that such contracts would be reported but also how they would be unbundled.

Of course, under IP’s proposal, these details were irrelevant because all such contracts should be eliminated from consideration. See, e.g., IP Ex. 1.1 at 4; IP Br. at 5. Perhaps, this irrelevancy is the source of the confusion. Nonetheless, regardless of whether IP’s proposal had been accepted, there can be no doubt about how IP intended it to function.

More importantly, if the Commission rejects IP’s solution on how to break the circularity, it should take affirmative actions to prevent a distortion of the NFF values that relies on stale data. Because the HEPO (and virtually every party) recognizes that a problem exists in using the circular data, the Commission should make it clear to the NFF that such data should be eliminated from consideration, *regardless of how one arrives at it in the unbundling process*. The Commission may decide that the law requires an unbundling process as provided for in the HEPO, but this does not mean that the data derived from such a calculation is necessarily useful in deriving a market value—indeed, most parties agree that it is not. Only with the elimination of this data will the NFF be able to create market values that are as accurate as possible.

Thus, IP requests that the paragraph at issue be modified as follows, with the underlined portions deleted and the bold portions added (IP makes this request on the assumption that its use of market forwards would nonetheless be rejected for the other reasons contained in this part of the HEPO):

IP's proposal is [even more problematic] **also rejected**. First, although it is unclear whether it would be IP's or the other contracting party's market assumptions that would be used as the market value proxy, IP has not refuted other parties' suggestions that IP intends to use its market assumptions. Why IP's market assumptions should be relied upon rather than the other contracting party's assumptions has not been explained. [IP also seems uncertain how its own proposal would be administered when it is faced with unbundling contracts for which no market assumptions exist. The Commission agrees that such contracts must be reported, but does not understand how IP intends to unbundle transition charges when it reports such contracts.] For those contracts where market assumptions exist, the Commission **also** agrees with those parties who do not believe such assumptions can be audited. **Nonetheless, because the circularity problem is not resolved by the unbundling method approved by the Commission above, the Commission directs the elimination from consideration of all contracts unbundled in accord with the manner set forth in this Section (i.e., contracts for which only the prior year's NFF values were used to calculate an unbundled market value).**

Alternatively, if the Commission does not believe it should direct the elimination of this data, it should at a minimum replace the word "directs" with "suggests" in the last sentence of the above replacement language.

WHEREFORE, Illinois Power Company requests that the Commission amend the HEPO as set forth above.

Respectfully submitted,

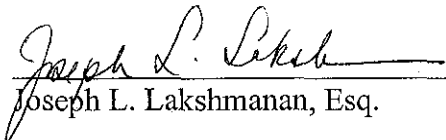


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CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 6th day of April, 2000, I served a copy of Illinois Power's Brief on Exceptions by electronic mail and overnight delivery, from Decatur, Illinois, fees prepaid to the individuals on the service list attached.



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